



BellSouth Telecommunications, Inc.
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June 7, 2002

REC'D TN
REGULATORY
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OFFICE OF THE
EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Docket to Establish Generic Performance Measurements, Benchmarks
and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*
Docket No. 01-00193

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Reply to CLEC Response in Opposition to BellSouth's Petition for Stay. Copies of the enclosed are being provided to counsel of record.

Very truly yours,


Guy M. Hicks

GMH:ch

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In Re: *Docket to Establish Generic Performance Measures, Benchmarks, and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*

Docket No. 01-00193

**BELLSOUTH TELECOMMUNICATIONS, INC.'S REPLY TO CLEC
RESPONSE IN OPPOSITION TO BELLSOUTH'S PETITION FOR STAY**

BellSouth Telecommunications, Inc., ("BellSouth") hereby files its Reply to CLEC Response in Opposition to BellSouth's Petition for Stay, and states the following:

On May 21, 2002, BellSouth filed its Petition for Stay. In this Petition, BellSouth requested that the Authority stay its Order issued May 14, 2002, pending Reconsideration and, to the extent necessary, a subsequent Appeal. The primary basis for this request is that complying with the Order is simply impossible. In support of this assertion, BellSouth attached the Affidavit of Alphonso J. Varner, which set forth the facts that demonstrate that complying with the Order is impossible.

In response to BellSouth's Petition, the CLEC Coalition claims that the fact that complying with the Order is impossible is no reason for it to be stayed. Instead, the CLECs appear to contend that BellSouth should simply violate the Authority's Order, then raise impossibility as a defense in any subsequent action by the Authority to sanction BellSouth for failure to comply with the Order. (CLEC Response, p. 2). To the contrary, BellSouth believes that the more prudent course

is to point out to the Authority at the earliest opportunity that its Order cannot be complied with, and to request appropriate dispensation from the Authority in light of this fact.

Beyond this, the CLECs have not only failed to file an Affidavit in response to the verified facts that support BellSouth's request, they have not even cited to any specific facts to show that it is possible for BellSouth to comply with the Order. Instead, the CLECs make an unsupported assertion to this effect by referring to BellSouth's implementation of the Order on performance measurements issued by the Florida Public Service Commission. The CLECs' contention on this point, however, is inaccurate and misleading.

First, the CLECs make the unsupported contention that the plan ordered by the Florida Commission is similar to the plan Ordered by the Authority. The CLECs do not contend that the two plans are the same in all respects, and they have provided no factual basis to support the implication that implementation of both should be possible in exactly the same time frame. Further, even the CLECs' claim of similarity is inaccurate. The plan ordered by the Authority and the Florida plan are different in substantial respects, and at least some of these differences underlie the difficulty in implementing the plan ordered by the Authority. To give two examples, both of which Mr. Varner addressed in his Affidavit, the Authority changed 61 of the 64 measures proposed by BellSouth. (Varner Affidavit, ¶ 5). The changes in the measurements ordered by the Florida Commission were not nearly so extensive. Moreover, the Authority ordered that a number of regional

measurements be changed so that reporting is done on a state-specific basis. (Varner Affidavit, ¶ 10). Implementing this aspect of the Order is a very time-consuming process that, again, BellSouth did not face in Florida.

Beyond this, the CLEC Coalition's assertion that BellSouth implemented the Florida plan in ninety days is, while technically accurate in some respects, extremely misleading. Florida entered the Order that set most aspects of the measurement plan on September 10, 2001 (Order No. PSC-01-1819-FOF-TP). This Order left certain features of the remedy plan to be developed by BellSouth according to guidelines set forth in the Order. Over the next several months, a number of workshops were held, and comments concerning implementation were filed by both BellSouth and the CLECs. On January 23, 2002, BellSouth submitted its proposed plan to implement the Commission's Order, and the Commission approved the plan in the Order issued February 12, 2002. Thus, in reality, BellSouth had the opportunity to work on most aspects of implementation of the Florida plan for a period of eight months, a situation that is radically different from the situation with which BellSouth is confronted in Tennessee. Many of the members of the CLEC Coalition participated in the Florida proceeding, so they are well aware of the true facts. Given these true facts, it is grossly misleading for the CLECs to contend that the implementation timeframe in Florida is the same as the time BellSouth has been given to implement the Authority's Order.

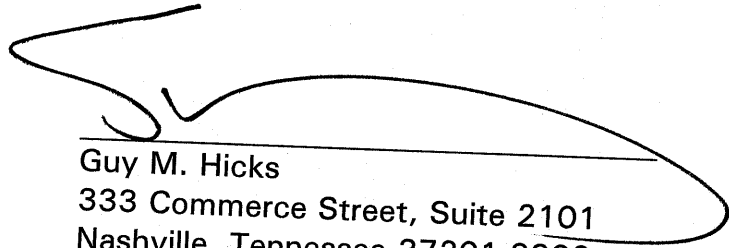
Again, BellSouth has supplied in the form of an Affidavit a verified statement of facts, upon which one can readily conclude that it is impossible to implement

the Order within the ordered timeframe. The CLEC Coalition has provided nothing to contradict these facts except vague and unverified allegations, and an attempt to buttress these allegations by a misleading reference to the Florida proceeding.

WHEREFORE, BellSouth requests the entry of an Order granting its Petition for Stay.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2002, a copy of the foregoing document was served on the following parties, via the method indicated:

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- ☐ Overnight

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